UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 01/SUBREGION 34

DOLGENCORP, LLC D/B/A DOLLAR GENERAL **and** **UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, LOCAL 371, AFL-CIO**	**Cases 01-CA-284330** **01-CA-286021** **01-CA- 287491**

ORDER CONSOLIDATING CASES,
CONSOLIDATED COMPLAINT AND NOTICE OF HEARING

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board) and to avoid unnecessary costs or delay, IT IS ORDERED THAT Cases 01-CA-284330, 01-CA-286021, and 01-CA-287941, which are based on charges filed by United Food and Commercial Workers International Union, Local 371, AFL-CIO (the Union) against Dolgencorp, LLC d/b/a Dollar General (Respondent) are consolidated.

This Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq. and Section 102.15 of the Board's Rules and Regulations, and alleges Respondent has violated the Act as described below.

1. CHARGES

(a) The charge in Case 01-CA-284330 was filed by the Union on October 12, 2021, and a copy was served on Respondent by regular U.S. mail on October 12, 2021.

(b) The charge in Case 01-CA-286021 was filed by the Union on November 5, 2021, and a copy was served on Respondent by regular U.S. mail on November 10, 2021.

(c) The amended charge in Case 01-CA-286021 was filed by the Union on May 10, 2022, and a copy was served on Respondent by regular U.S. mail on May 11, 2022.

(d) The charge in Case 01-CA-287491 was filed by the Union on December 10, 2021, and a copy was served on Respondent by regular U.S. mail on December 10, 2021.

2. JURISDICTION AND COMMERCE

(a) At all material times, Respondent has been a Kentucky limited liability company with over 18,000 retail stores located throughout the contiguous United States, including corporate offices housing its headquarters in Goodlettsville, Tennessee and the retail store at issue in this proceeding, located at Barkhamsted, Connecticut (its Barkhamsted store), and has been engaged in the retail sale of food, snacks, health and beauty aids, cleaning supplies, family apparel, housewares and seasonal items.

(b) Annually, in conducting its business operations described above in paragraph 2(a), Respondent derives gross revenue in excess of $500,000.

(c) Annually, Respondent purchases and receives at its Barkhamsted store goods valued in excess of $50,000 directly from points outside of the State of Connecticut.

(d) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

3. UNION STATUS

At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

4. SUPERVISORS AND AGENTS

(a) At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act, and/or agents of Respondent within the meaning of 2(13) of the Act:

Janie Farris -	--	Director of Operational Effectiveness
Justin Hancock	--	Manager of Operational Effectiveness
David Lovelace	--	Senior Director of Labor Relations
Jason Ransom	--	District Manager
Basel Soukarieh	--	Store Manager
Tod Boyster	--	Senior Director of Operational Effectiveness
Jeff Merryman	--	Human Resource Director of Emerging Markets
Kathy Reardon	--	Executive Vice President and Chief People Officer

(b) From about September 25, 2021 to October 22, 2021, Respondent contracted with Labor Relations Institute, Inc. of Broken Arrow, Arizona (herein "LRI") which employed various unnamed individuals who communicated directly with Respondent's Barkhamsted employees regarding the exercise of their rights to organize and bargain collectively, and in doing so LRI acted as an agent of Respondent within the meaning of 2(13) of the Act.

5. SURVEILLANCE AND CREATION OF IMPRESSION OF SURVEILLANCE

From about September 22, 2021 to October 21, 2021, Respondent engaged in surveillance of its employees and created the impression among its employees that their union or protected concerted activities were under surveillance, by deploying various corporate officers from the Goodlettsville, Tennessee headquarters, including Farris, Hancock, Lovejoy, and others whose names are unknown to the General Counsel (herein "Corporate Managers") who embedded themselves in the store, eavesdropped and interrupted employees' conversations,

worked alongside them, and maintained a near daily presence while working alongside the Barkhamsted store employees.

6. INTERFERENCE, THREATS, AND CAPTIVE AUDIENCE MEETINGS

(a) Between September 25, 2021 and October 21, 2022, Respondent held mandatory captive-audience meetings and forced employees to convene on paid time to listen to representatives from LRI in order to discourage union activity.

(b) On various occasions during the period from September 22, 2021 to October 21, 2021, Respondent, by its Corporate Managers, cornered employees while performing their job duties and required them to listen to Respondent's speech about the exercise of Section 7 rights.

(c) Beginning about September 22, 2021 until about October 21, 2021, Respondent, by its visiting Corporate Managers, more closely supervised the work of its Barkhamsted employees.

(d) In late September or early October 2021, Respondent, by Farris, at the Barkhamsted store, raised the specter of the closing of its Auxvasse, Missouri store to threaten employees that the Barkhamsted store would close if the employees voted to unionize.

(e) On about October 16, 2021, Respondent, by Ransom, at the Barkhamsted store, raised the specter of the closing of its Auxvasse, Missouri store to threaten employees that the Barkhamsted store would close if the employees voted to unionize.

7. SOLICITATION OF GRIEVANCES AND GRANT OF BENEFITS

(a) On various occasions during the period from September 22, 2021 to October 21, 2021, Respondent, by its Corporate Managers, solicited employee grievances by engaging employees in private discussions and asking employees questions about what was bothering them, what was on their minds, what they would change, what the Respondent could do better,

and impliedly promised to remedy those grievances.

(b) About early October 2021, by advising employees that the District Manager who employees had complained of had been removed from his position, Respondent remedied grievances it had solicited and increased benefits to employees.

8. RETALIATION

(a) In late September 2021 or early October 2021, Respondent's employee Jacob Serafini (Serafini) engaged in protected concerted activity with other employees for the purposes of mutual aid and protection by speaking with other employees about Respondent's nationwide practice of paying employees at or near minimum wage.

(b) About October 8, 2021, Serafini complained to Corporate Manager Hancock about Respondent's practices and policies regarding making deliveries and unloading and stocking deliveries at the Barkhamsted store.

(c) About October 8, 2021, Respondent discharged Serafini.

(d) Respondent discharged Serafini because he engaged in the protected concerted activities described in paragraph 8(a) and/or 8 (b), and because he engaged in Union activities, and to discourage other employees from engaging in such activities.

9. 8(a)(1) CONCLUSION

By the conduct described above in paragraphs 5, 6, 7, and 8(c) and (d), Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

10. 8(a)(3) CONCLUSION

By the conduct described above in paragraph 8(c) and (d), Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act

WHEREFORE, the General Counsel further seeks an Order providing for all relief as may be just and proper to remedy the unfair labor practices alleged, including, but not limited to, requirements that Respondent:

(a) preserve and, within 14 days of a request, provide at the office designated by the Board or its agents, a copy of all payroll records, social security payroll records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of such Order. If requested, the originals of such records shall be provided to the Board or its agents in the same manner;

(b) make employee Jacob Serafini whole, including but not limited to, by reimbursement for consequential damages he incurred as a result of Respondent's unlawful conduct;

(c) offer reinstatement to Jacob Serafini; and, in the event he is unable to return to work, instate a qualified applicant of the Union's choice;

(d) send Jacob Serafini a letter apologizing for any hardship or distress caused by his discharge, by U.S. Mail and email with a courtesy copy to Region 1, on Respondent's letterhead and signed by a responsible official of Respondent;

(e) require Respondent to provide the Union with employee contact information,

equal time to address employees if they are convened by Respondent for "captive audience" meetings about union representation, and reasonable access to Respondent's bulletin boards and all places where notices to employees are customarily posted;

(f) provide ongoing training of employees, including supervisors and managers, both current and new, on employees' rights under the Act and compliance with the Board's Orders with an outline of the training submitted to the Agency in advance of what will be presented and that the Federal Mediation and Conciliation Service (FMCS) conduct such training;

(g) physically post the Notice to Employees at all of Respondent's facilities in the United States and its Territories and require the Notice to be posted for 60 days, and distribute the Notice to Employees and the Board's Orders to current and new supervisors and managers**;**

(h) electronically distribute the Notice to Employees to all employees employed by Respondent in the United States and its Territories by text messaging, posting on social media websites, and posting on internal apps and intranet websites.

(i) grant a Board Agent access to Respondent's facilities and produce records so that the Board Agent can determine whether Respondent has complied with posting, distribution, and mailing requirements; and

(j) at a meeting or meetings scheduled to ensure the widest possible attendance, have Kathy Reardon read the Notice to Employees and an Explanation of Rights to employees employed by Respondent at its Barkhamsted facility on work time in the presence of a Board agent and a representative of the Union, or have a Board agent read the Notice to Employees and an Explanation of Rights to employees employed by Respondent at its Barkhamsted facility on work time in the presence of a representative of the Union, Kathy Reardon and Jeff

Owens, and make a video recording of the reading of the Notice to Employees and the Explanation of Rights, with the recording being distributed to employees by electronic means or by mail.

The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before August 29, 2022.** Respondent also must serve a copy of the answer on each of the other parties.

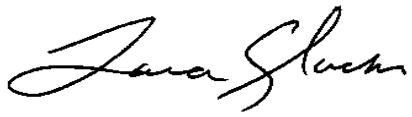
The answer must be filed electronically through the Agency's website. To file electronically, go to www.nlrb.gov, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. Responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file

containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion or Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on October 18, 2022, at the A.A. Ribicoff Federal Building, 450 Main Street, Suite 410, Hartford, Connecticut, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding has the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated: August 15, 2022



Laura A. Sacks, Regional Director
National Labor Relations Board
Region 01

Attachments

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 1, SUBREGION OFFICE 34

DOLGENCORP, LLC D/B/A DOLLAR GENERAL		
and	**Cases**	**01-CA-284330** **01-CA-286021** **01-CA-287491**
UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, LOCAL 371, AFL–CIO		

RESPONDENT DOLLAR GENERAL'S
ANSWER TO THE CONSOLIDATED COMPLAINT

Pursuant to Sections 102.20 and 102.21 of the Rules and Regulations of the National Labor Relations Board ("NLRB" or "Board"), Dolgencorp, LLC D/B/a Dollar General ("Respondent"), through its undersigned counsel, answers the Consolidated Complaint ("Complaint") according to the numbered paragraphs thereof.

Introduction

To the extent the Complaint's introduction contains factual allegations and/or legal conclusions, they are denied.

Paragraph 1

(a) Respondent is without knowledge as to when the charge referenced was filed, but Respondent admits that it received a copy of the charge on or about the listed date.

(b) Respondent is without knowledge as to when the charge referenced was filed, but Respondent admits that it received a copy of the charge on or about the listed date.

(c) Respondent is without knowledge as to when the amended charge referenced was filed, but Respondent admits that it received a copy of the amended charge on or about the listed date.

(d) Respondent is without knowledge as to when the charge referenced was filed, but Respondent admits that it received a copy of the charge on or about the listed date.

Paragraph 2

(a) Respondent admits the allegations in Paragraph 2(a).

(b) Respondent admits the allegations in Paragraph 2(b).

(c) Respondent admits the allegations in Paragraph 2(c).

(d) Respondent admits the allegations in Paragraph 2(d).

Paragraph 3

(a) Admitted on information and belief.

Paragraph 4

(a) Respondent admits the allegations in Paragraph 4(a) with the following corrections:

- Janie Farris is now Senior Director of Operational Effectiveness. At the times underlying the Complaint allegations, Farris was Director of Operational Effectiveness.
- Justin Hancock is Senior Manager, Operational Effectiveness.
- The correct name is Daniel Lovelace.
- Tod Boyster is Vice President, Division Manager.

(b) Respondent denies the allegations in Paragraph 4(b).

Paragraph 5

Respondent denies the allegations in Paragraph 5.

Paragraph 6

(a) Respondent denies the allegations in Paragraph 6(a).

(b) Respondent denies the allegations in Paragraph 6(b).

(c) Respondent denies the allegations in Paragraph 6(c).

(d) Respondent denies the allegations in Paragraph 6(d).

(e) Respondent denies the allegations in Paragraph 6(e).

Paragraph 7

(a) Respondent denies the allegations in Paragraph 7(a).

(b) Respondent denies the allegations in Paragraph 7(b).

Paragraph 8

(a) Respondent denies the allegations in Paragraph 8(a).

(b) Respondent denies the allegations in Paragraph 8(b).

(c) Respondent admits the allegation in Paragraph 8(c).

(d) Respondent denies the allegations in Paragraph 8(d).

Paragraph 9

Respondent denies the allegations in Paragraph 9.

Paragraph 10

Respondent denies the allegations in Paragraph 10.

Further Global Denial

Any and all remaining allegations contained in the Complaint, including but not limited to the prayer for relief section, are denied. Any and all Complaint allegations not specifically admitted above are denied.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim upon which relief can be granted.

2. The facts alleged in the Complaint concerning the discharge of Jacob Serafini ("Serafini") cannot constitute any unfair labor practice within the meaning of Section 8(a)(3) or (1) of the National Labor Relations Act ("NLRA" or the "Act"). Respondent did not discharge Serafini because he engaged in activities protected by Section 7 of the Act nor in order to discourage employees from engaging in such activities. Respondent discharged Serafini for legitimate business reasons and would have taken the same action even in the absence of any activity protected by Section 7 of the Act.

3. No order of the Board may require the reinstatement of Serafini or the payment to him of any backpay because he was discharged for cause. NLRA § 10(c).

4. The facts alleged in the Complaint cannot constitute any unfair labor practice within the meaning of Section 8(a)(1) of the Act because they do not describe conduct of the Respondent that constitutes unlawful interference, restraint, or coercion of employees in the exercise of the rights guaranteed in Section 7 of the Act.

For example, supervisors of Respondent being present at Respondent's Barkhamsted, Connecticut facility, supervising employees, and/or speaking to employees about Respondent's business does not interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7 of the Act and therefore does not violate Section 8(a)(1) of the Act.

For example, supervisors of Respondent exercising the rights to engage in the "expressing of any views, argument, or opinion, or the dissemination therefore," where "such expression contains no threat of reprisal or force or promise of benefit," does not "constitute" or provide "evidence of" any unfair labor practice under Section 8(a)(1) or any other provision in the Act, irrespective of whether Respondent engages in such speech to employees in the workplace, on company time, or in a meeting or a one-on-one discussion where attendance is considered mandatory. NLRA § 8(c).

5. Any finding of an unfair labor practice based in whole or in part on speech and/or views, argument, or opinion spoken or disseminated by Respondent or managers, supervisors, agents and other persons acting on behalf of Respondent (collectively hereinafter referred to as "Respondent's agents" or "its agents") in any meetings, one-on-one discussions, or written or other communications, whether in written, printed, graphic, or visual form which "contains no threat of reprisal or force or promise of benefit" is prohibited by NLRA Section 8(c).

6. Any finding of an unfair labor practice based in whole or in part on speech and/or views, argument, or opinion spoken or disseminated by Respondent or its agents in any meetings, one-on-one discussions, or written or other communications which "contains no threat of reprisal or force or promise of benefit" constitutes an unconstitutional infringement on the First Amendment rights of freedom of speech and the right of the people peaceably to assemble.

7. Any finding of an unfair labor practice based in whole or in part on: (a) speech and/or views, argument, or opinion spoken or disseminated by Respondent or its agents in any meetings, one-on-one discussions, or written or other communications which "contains no threat of reprisal or force or promise of benefit," and (b) the failure by Respondent and its agents to make affirmative statements about rights ostensibly protected by the NLRA (e.g., "that

attendance is voluntary," that they "will be free to leave at any time," that "non-attendance will not result in reprisals," and that "attendance will not result in rewards or benefits"),[1] constitutes an unconstitutional infringement on the First Amendment rights of freedom of speech and the right of the people peaceably to assemble, unconstitutional compelled speech that is prohibited by the First Amendment, and an unconstitutional deprivation and taking of property prohibited by the Fifth Amendment. *See, e.g., National Association of Manufacturers v. NLRB*, 717 F.3d 947 (D.C. Cir. 2013).

8. Any finding of an unfair labor practice based in whole or in part on: (a) speech and/or views, argument, or opinion spoken or disseminated by Respondent or its agents in any meetings, one-on-one discussions, or written or other communications which "contains no threat of reprisal or force or promise of benefit," (b) the failure by Respondent and its agents to make affirmative statements about rights ostensibly protected by the NLRA (e.g., "that attendance is voluntary," that they "will be free to leave at any time," that "non-attendance will not result in reprisals," and that "attendance will not result in rewards or benefits"), violates the Act's prohibition against the Board's creation of affirmative employer notice requirements unrelated to a pending representation petition and/or pending charge and complaint resulting in an unfair labor practice finding. *See, e.g., Chamber of Commerce of the United States v. NLRB*, 721 F.3d 152 (4th Cir. 2013); *cf. National Association of Manufacturers v. NLRB*, 717 F.3d 947 (D.C. Cir. 2013).

[1] *See, e.g.*, the affirmative requirements stated in the General Counsel's Brief in Support of General Counsel's Exceptions to the Administrative Law Judge's Decision submitted in *Cemex Construction Materials Pacific, LLC*, NLRB Cases 28-CA-230115 et al., pp. 56-62 (April 11, 2022).

9. Any finding of an unfair labor practice based in whole or in part on the failure by Respondent and its agents to grant Union representatives equal access to Respondent's property, and any remedy requiring that Union representatives be given such equal access, constitutes an unconstitutional deprivation and taking of property prohibited by the Fifth Amendment.

10. The finding of an unfair labor practice based on the Complaint would violate Respondent's Due Process Rights under the U.S. Constitution and other federal law as the facts alleged in the Complaint are not unfair labor practices within the meaning of the Act.

11. The finding of an unfair labor practice based on the Complaint would be improper because Respondent's alleged actions with regard to its speech were consistent with the Notice of the Election in NLRB Case No. 01-RC-283202.

12. No remedy is appropriate as Respondent has not engaged in any unfair labor practice. Further, the remedies requested in the Complaint are punitive, inappropriate, non-remedial, violate Respondent's freedom of speech and assembly rights under the First Amendment, violate the takings clause of the Fifth Amendment, and are beyond the authority of the Board to order under Section 10(c) of the Act.

For example, the ordering of the prayed-for remedy relating to the reading of a notice would exceed the Board's authority under Section 10(c) of the Act and constitute an unconstitutional infringement on the First Amendment rights of freedom of speech and the right of the people peaceably to assemble, unconstitutional compelled speech that is prohibited by the First Amendment, and an unconstitutional deprivation and taking of property prohibited by the Fifth Amendment. *See, e.g., Denton Cty. Elec. Coop., Inc. v. NLRB*, 962 F.3d 161, 174 (5th Cir. 2020).

14. Some or all of the allegations in the Complaint are time-barred by Section 10(b) of the Act.

15. Respondent further reserves the right to amend and/or supplement its answers and affirmative defenses.

WHEREFORE, Respondent respectfully requests that the Complaint be dismissed in its entirety, with prejudice.

Dated: August 29, 2022

Respectfully submitted,

MORGAN, LEWIS & BOCKIUS LLP

By: */s/ Michael E. Lignowski/rts*

Michael E. Lignowski
Senior Attorney
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
Phone: +1.215.963.5455
Fax: +1.215.963.5001
Email: michael.lignowski@morganlewis.com

Attorney for Respondent Dollar General

CERTIFICATE OF SERVICE

I hereby certify that on August 29, 2022, an electronic copy of the foregoing Respondent Dollar General's Answer to the Consolidated Complaint in NLRB Cases 01-CA-284330, et al. was E-Filed with NLRB Region 1 and served on the Charging Party by e-mail at this e-mail address:

Jessica Petronella, Organizing Director
United Food and Commercial Workers
International Union Local 371, AFL-CIO
290 Post Road West
Westport, CT 06881
Email: jespetronella@gmail.com

/s/ Ryan T Sears (dated August 29, 2022)

Ryan T Sears
Associate
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004
Phone: +1.202.739.5077
Fax: +1.202.739.3001
Email: ryan.sears@morganlewis.com

Attorney for Respondent Dollar General

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 1, SUBREGION OFFICE 34

DOLGENCORP, LLC D/B/A DOLLAR GENERAL		
and	**Cases**	**01-CA-284330** **01-CA-286021** **01-CA-287491**
UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, LOCAL 371, AFL–CIO		

RESPONDENT DOLLAR GENERAL'S ANSWER TO THE AMENDED CONSOLIDATED COMPLAINT

Pursuant to Sections 102.20 and 102.21 of the Rules and Regulations of the National Labor Relations Board ("NLRB" or "Board"), Dolgencorp, LLC D/B/a Dollar General ("Respondent"), through its undersigned counsel, answers the Consolidated Complaint ("Complaint") according to the numbered paragraphs thereof.

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(c) Respondent admits the allegations in Paragraph 2(c).

(d) Respondent admits the allegations in Paragraph 2(d).

Paragraph 3

(a) Admitted on information and belief.

Paragraph 4

(a) Respondent admits the allegations in Paragraph 4(a) with the following corrections:

- Janie Farris is now Senior Director of Operational Effectiveness. At the times underlying the Complaint allegations, Farris was Director of Operational Effectiveness.
- Tod Boyster is Vice President, Division Manager.
- The employment relationship between Respondent and George Morgan terminated on October 12, 2021

(b) Respondent denies the allegations in Paragraph 4(b).

Paragraph 5

Respondent denies the allegations in Paragraph 5.

Paragraph 6

(a) Respondent denies the allegations in Paragraph 6(a).

(b) Respondent denies the allegations in Paragraph 6(b).

(c) Respondent denies the allegations in Paragraph 6(c).

(d) Respondent denies the allegations in Paragraph 6(d).

(e) Respondent denies the allegations in Paragraph 6(e).

Paragraph 7

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Further Global Denial

Any and all remaining allegations contained in the Complaint, including but not limited to the prayer for relief section, are denied. Any and all Complaint allegations not specifically admitted above are denied.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim upon which relief can be granted.

2. The facts alleged in the Complaint concerning the discharge of Jacob Serafini ("Serafini") cannot constitute any unfair labor practice within the meaning of Section 8(a)(3) or (1) of the National Labor Relations Act ("NLRA" or the "Act"). Respondent did not discharge Serafini because he engaged in activities protected by Section 7 of the Act nor in order to discourage employees from engaging in such activities. Respondent discharged Serafini for legitimate business reasons and would have taken the same action even in the absence of any activity protected by Section 7 of the Act.

3. No order of the Board may require the reinstatement of Serafini or the payment to him of any backpay because he was discharged for cause. NLRA § 10(c).

4. The facts alleged in the Complaint cannot constitute any unfair labor practice within the meaning of Section 8(a)(1) of the Act because they do not describe conduct of the Respondent that constitutes unlawful interference, restraint, or coercion of employees in the exercise of the rights guaranteed in Section 7 of the Act.

For example, supervisors of Respondent being present at Respondent's Barkhamsted, Connecticut facility, supervising employees, and/or speaking to employees about Respondent's business does not interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7 of the Act and therefore does not violate Section 8(a)(1) of the Act.

For example, supervisors of Respondent exercising the rights to engage in the "expressing of any views, argument, or opinion, or the dissemination therefore," where "such expression contains no threat of reprisal or force or promise of benefit," does not "constitute" or provide "evidence of" any unfair labor practice under Section 8(a)(1) or any other provision in the Act, irrespective of whether Respondent engages in such speech to employees in the workplace, on company time, or in a meeting or a one-on-one discussion where attendance is considered mandatory. NLRA § 8(c).

5. Any finding of an unfair labor practice based in whole or in part on speech and/or views, argument, or opinion spoken or disseminated by Respondent or managers, supervisors, agents and other persons acting on behalf of Respondent (collectively hereinafter referred to as "Respondent's agents" or "its agents") in any meetings, one-on-one discussions, or written or other communications, whether in written, printed, graphic, or visual form which "contains no threat of reprisal or force or promise of benefit" is prohibited by NLRA Section 8(c).

6. Any finding of an unfair labor practice based in whole or in part on speech and/or views, argument, or opinion spoken or disseminated by Respondent or its agents in any meetings, one-on-one discussions, or written or other communications which "contains no threat of reprisal or force or promise of benefit" constitutes an unconstitutional infringement on the First Amendment rights of freedom of speech and the right of the people peaceably to assemble.

7. Any finding of an unfair labor practice based in whole or in part on: (a) speech and/or views, argument, or opinion spoken or disseminated by Respondent or its agents in any meetings, one-on-one discussions, or written or other communications which "contains no threat of reprisal or force or promise of benefit," and (b) the failure by Respondent and its agents to make affirmative statements about rights ostensibly protected by the NLRA (e.g., "that

attendance is voluntary," that they "will be free to leave at any time," that "non-attendance will not result in reprisals," and that "attendance will not result in rewards or benefits"),[1] constitutes an unconstitutional infringement on the First Amendment rights of freedom of speech and the right of the people peaceably to assemble, unconstitutional compelled speech that is prohibited by the First Amendment, and an unconstitutional deprivation and taking of property prohibited by the Fifth Amendment. *See, e.g., National Association of Manufacturers v. NLRB*, 717 F.3d 947 (D.C. Cir. 2013).

8. Any finding of an unfair labor practice based in whole or in part on: (a) speech and/or views, argument, or opinion spoken or disseminated by Respondent or its agents in any meetings, one-on-one discussions, or written or other communications which "contains no threat of reprisal or force or promise of benefit," (b) the failure by Respondent and its agents to make affirmative statements about rights ostensibly protected by the NLRA (e.g., "that attendance is voluntary," that they "will be free to leave at any time," that "non-attendance will not result in reprisals," and that "attendance will not result in rewards or benefits"), violates the Act's prohibition against the Board's creation of affirmative employer notice requirements unrelated to a pending representation petition and/or pending charge and complaint resulting in an unfair labor practice finding. *See, e.g., Chamber of Commerce of the United States v. NLRB*, 721 F.3d 152 (4th Cir. 2013); *cf. National Association of Manufacturers v. NLRB*, 717 F.3d 947 (D.C. Cir. 2013).

[1] *See, e.g.*, the affirmative requirements stated in the General Counsel's Brief in Support of General Counsel's Exceptions to the Administrative Law Judge's Decision submitted in *Cemex Construction Materials Pacific, LLC*, NLRB Cases 28-CA-230115 et al., pp. 56-62 (April 11, 2022).

9. Any finding of an unfair labor practice based in whole or in part on the failure by Respondent and its agents to grant Union representatives equal access to Respondent's property, and any remedy requiring that Union representatives be given such equal access, constitutes an unconstitutional deprivation and taking of property prohibited by the Fifth Amendment.

10. The finding of an unfair labor practice based on the Complaint would violate Respondent's Due Process Rights under the U.S. Constitution and other federal law as the facts alleged in the Complaint are not unfair labor practices within the meaning of the Act. Furthermore, such a finding based on retroactive application to a change in Board precedent would constitute an impermissible manifest injustice to Respondent. *Christopher v. SmithKline Beecham Corp*., 567 U.S. 142, 158-59 (2012) ("It is one thing to expect regulated parties to conform their conduct to an agency's interpretations once the agency announces them; it is quite another to require regulated parties to divine the agency's interpretations in advance or else be held liable when the agency announces its interpretations for the first time in an enforcement proceeding and demands deference."); *Pub. Serv. Co. of Colorado v. FERC*, 91 F.3d 1478, 1488 (D.C. Cir. 1996) "[W]hen there is a substitution of new law for old law that was reasonably clear, the new rule may justifiably be given prospectively-only effect in order to protect the settled expectations of those who had relied on the preexisting rule.") (internal quotations omitted).

11. The finding of an unfair labor practice based on the Complaint would be improper because Respondent's alleged actions with regard to its speech were consistent with the Notice of the Election in NLRB Case No. 01-RC-283202.

12. No remedy is appropriate as Respondent has not engaged in any unfair labor practice. Further, the remedies requested in the Complaint are punitive, inappropriate, non-

remedial, violate Respondent's freedom of speech and assembly rights under the First Amendment, violate the takings clause of the Fifth Amendment, and are beyond the authority of the Board to order under Section 10(c) of the Act.

For example, the ordering of the prayed-for remedy relating to the reading of a notice would exceed the Board's authority under Section 10(c) of the Act and constitute an unconstitutional infringement on the First Amendment rights of freedom of speech and the right of the people peaceably to assemble, unconstitutional compelled speech that is prohibited by the First Amendment, and an unconstitutional deprivation and taking of property prohibited by the Fifth Amendment. *See, e.g., Denton Cty. Elec. Coop., Inc. v. NLRB*, 962 F.3d 161, 174 (5th Cir. 2020).

13. It is improper for the Board to issue any remedy in this case "based on a pattern of similar prior conduct in response to prior protected activity at other locations . . . ." GC Ex. 2 at 2.

First, the Board has never found – nor does the Complaint allege – that Respondent has engaged in any unfair labor practice by any "prior conduct . . . at other locations . . . . " *Cf.* Cpl. at ¶ 2(a) ("the retail store at issue in this proceeding [is] located at Barkhamsted, Connecticut . . . .") Accordingly, the Board lacks statutory authority to issue a remedy based on such conduct. *See* NLRA § 10(b) (no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge); NLRA § 10(c) (Board's remedial order must be based on finding that Respondent has engaged in unfair labor practices stated in the complaint).

Second, the Board permitting introduction of such evidence and relying upon it to support a remedy would violate Respondent's Due Process Rights under the U.S. Constitution and other federal law. The Complaint does not provide details regarding the "prior conduct . . . at other

locations," including the identity of Respondent's agents, the other locations, the conduct, or the dates the conduct occurred, thereby depriving Respondent adequate opportunity to defend against these assertions.

14. Some or all of the allegations in the Complaint are time-barred by Section 10(b) of the Act.

15. Respondent further reserves the right to amend and/or supplement its answers and affirmative defenses.

WHEREFORE, Respondent respectfully requests that the Complaint be dismissed in its entirety, with prejudice.

Dated: January 24, 2023

Respectfully submitted,

MORGAN, LEWIS & BOCKIUS LLP

By: */s/ Michael E. Lignowski/rts*

Michael E. Lignowski
Senior Attorney
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
Phone: +1.215.963.5455
Fax: +1.215.963.5001
Email: michael.lignowski@morganlewis.com

Attorney for Respondent Dollar General

CERTIFICATE OF SERVICE

I hereby certify that on January 24, 2023, an electronic copy of the foregoing Respondent Dollar General's Answer to the Amended Consolidated Complaint in NLRB Cases 01-CA-284330, et al. was sent by e-mail to the following e-mail addresses:

Jessica Petronella, Organizing Director
UFCW Local 371
290 Post Road West
Westport, CT 06881
Email: jespetronella@gmail.com
Charging Party Representative

Jo Anne P. Howlett, Esq.
NLRB, Region 1
10 Causeway St. - 10th Floor
Boston, MA 02222
Email: JoAnne.Howlett@nlrb.gov
Counsel for the General Counsel

/s/ Ryan T. Sears (dated January 24, 2023)

Ryan T. Sears, Associate
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004
Phone: +1.202.739.5077
Fax: +1.202.739.3001
Email: ryan.sears@morganlewis.com

Attorney for Respondent Dollar General

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 1, SUBREGION OFFICE 34

DOLGENCORP, LLC D/B/A DOLLAR GENERAL		
and	**Cases**	**01-CA-284330** **01-CA-286021** **01-CA-287491**
UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, LOCAL 371, AFL–CIO		

RESPONDENT DOLLAR GENERAL'S ANSWER TO THE AMENDED CONSOLIDATED COMPLAINT

Pursuant to Sections 102.20 and 102.21 of the Rules and Regulations of the National Labor Relations Board ("NLRB" or "Board"), Dolgencorp, LLC D/B/a Dollar General ("Respondent"), through its undersigned counsel, answers the Consolidated Complaint ("Complaint") according to the numbered paragraphs thereof.

Introduction

To the extent the Complaint's introduction contains factual allegations and/or legal conclusions, they are denied.

Paragraph 1

(a) Respondent is without knowledge as to when the charge referenced was filed, but Respondent admits that it received a copy of the charge on or about the listed date.

(b) Respondent is without knowledge as to when the charge referenced was filed, but Respondent admits that it received a copy of the charge on or about the listed date.

(c) Respondent is without knowledge as to when the amended charge referenced was filed, but Respondent admits that it received a copy of the amended charge on or about the listed date.

(d) Respondent is without knowledge as to when the charge referenced was filed, but Respondent admits that it received a copy of the charge on or about the listed date.

Paragraph 2

(a) Respondent admits the allegations in Paragraph 2(a).

(b) Respondent admits the allegations in Paragraph 2(b).

(c) Respondent admits the allegations in Paragraph 2(c).

(d) Respondent admits the allegations in Paragraph 2(d).

Paragraph 3

(a) Admitted on information and belief.

Paragraph 4

(a) Respondent admits the allegations in Paragraph 4(a) with the following corrections:

- Janie Farris is now Senior Director of Operational Effectiveness. At the times underlying the Complaint allegations, Farris was Director of Operational Effectiveness.
- Tod Boyster is Vice President, Division Manager.
- The employment relationship between Respondent and George Morgan terminated on October 12, 2021

(b) Respondent denies the allegations in Paragraph 4(b).

Paragraph 5

Respondent denies the allegations in Paragraph 5.

Paragraph 6

(a) Respondent denies the allegations in Paragraph 6(a).

(b) Respondent denies the allegations in Paragraph 6(b).

(c) Respondent denies the allegations in Paragraph 6(c).

(d) Respondent denies the allegations in Paragraph 6(d).

(e) Respondent denies the allegations in Paragraph 6(e).

Paragraph 7

(a) Respondent denies the allegations in Paragraph 7(a).

(b) Respondent denies the allegations in Paragraph 7(b).

Paragraph 8

(a) Respondent denies the allegations in Paragraph 8(a).

(b) Respondent denies the allegations in Paragraph 8(b).

(c) Respondent admits the allegation in Paragraph 8(c).

(d) Respondent denies the allegations in Paragraph 8(d).

Paragraph 9

Respondent denies the allegations in Paragraph 9.

Paragraph 10

Respondent denies the allegations in Paragraph 10.

Further Global Denial

Any and all remaining allegations contained in the Complaint, including but not limited to the prayer for relief section, are denied. Any and all Complaint allegations not specifically admitted above are denied.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim upon which relief can be granted.

2. The facts alleged in the Complaint concerning the discharge of Jacob Serafini ("Serafini") cannot constitute any unfair labor practice within the meaning of Section 8(a)(3) or (1) of the National Labor Relations Act ("NLRA" or the "Act"). Respondent did not discharge Serafini because he engaged in activities protected by Section 7 of the Act nor in order to discourage employees from engaging in such activities. Respondent discharged Serafini for legitimate business reasons and would have taken the same action even in the absence of any activity protected by Section 7 of the Act.

3. No order of the Board may require the reinstatement of Serafini or the payment to him of any backpay because he was discharged for cause. NLRA § 10(c).

4. The facts alleged in the Complaint cannot constitute any unfair labor practice within the meaning of Section 8(a)(1) of the Act because they do not describe conduct of the Respondent that constitutes unlawful interference, restraint, or coercion of employees in the exercise of the rights guaranteed in Section 7 of the Act.

For example, supervisors of Respondent being present at Respondent's Barkhamsted, Connecticut facility, supervising employees, and/or speaking to employees about Respondent's business does not interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7 of the Act and therefore does not violate Section 8(a)(1) of the Act.

For example, supervisors of Respondent exercising the rights to engage in the "expressing of any views, argument, or opinion, or the dissemination therefore," where "such expression contains no threat of reprisal or force or promise of benefit," does not "constitute" or provide "evidence of" any unfair labor practice under Section 8(a)(1) or any other provision in the Act, irrespective of whether Respondent engages in such speech to employees in the workplace, on company time, or in a meeting or a one-on-one discussion where attendance is considered mandatory. NLRA § 8(c).

5. Any finding of an unfair labor practice based in whole or in part on speech and/or views, argument, or opinion spoken or disseminated by Respondent or managers, supervisors, agents and other persons acting on behalf of Respondent (collectively hereinafter referred to as "Respondent's agents" or "its agents") in any meetings, one-on-one discussions, or written or other communications, whether in written, printed, graphic, or visual form which "contains no threat of reprisal or force or promise of benefit" is prohibited by NLRA Section 8(c).

6. Any finding of an unfair labor practice based in whole or in part on speech and/or views, argument, or opinion spoken or disseminated by Respondent or its agents in any meetings, one-on-one discussions, or written or other communications which "contains no threat of reprisal or force or promise of benefit" constitutes an unconstitutional infringement on the First Amendment rights of freedom of speech and the right of the people peaceably to assemble.

7. Any finding of an unfair labor practice based in whole or in part on: (a) speech and/or views, argument, or opinion spoken or disseminated by Respondent or its agents in any meetings, one-on-one discussions, or written or other communications which "contains no threat of reprisal or force or promise of benefit," and (b) the failure by Respondent and its agents to make affirmative statements about rights ostensibly protected by the NLRA (e.g., "that

attendance is voluntary," that they "will be free to leave at any time," that "non-attendance will not result in reprisals," and that "attendance will not result in rewards or benefits"),[1] constitutes an unconstitutional infringement on the First Amendment rights of freedom of speech and the right of the people peaceably to assemble, unconstitutional compelled speech that is prohibited by the First Amendment, and an unconstitutional deprivation and taking of property prohibited by the Fifth Amendment. *See, e.g., National Association of Manufacturers v. NLRB*, 717 F.3d 947 (D.C. Cir. 2013).

8. Any finding of an unfair labor practice based in whole or in part on: (a) speech and/or views, argument, or opinion spoken or disseminated by Respondent or its agents in any meetings, one-on-one discussions, or written or other communications which "contains no threat of reprisal or force or promise of benefit," (b) the failure by Respondent and its agents to make affirmative statements about rights ostensibly protected by the NLRA (e.g., "that attendance is voluntary," that they "will be free to leave at any time," that "non-attendance will not result in reprisals," and that "attendance will not result in rewards or benefits"), violates the Act's prohibition against the Board's creation of affirmative employer notice requirements unrelated to a pending representation petition and/or pending charge and complaint resulting in an unfair labor practice finding. *See, e.g., Chamber of Commerce of the United States v. NLRB*, 721 F.3d 152 (4th Cir. 2013); *cf. National Association of Manufacturers v. NLRB*, 717 F.3d 947 (D.C. Cir. 2013).

[1] *See, e.g.*, the affirmative requirements stated in the General Counsel's Brief in Support of General Counsel's Exceptions to the Administrative Law Judge's Decision submitted in *Cemex Construction Materials Pacific, LLC*, NLRB Cases 28-CA-230115 et al., pp. 56-62 (April 11, 2022).

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11. The finding of an unfair labor practice based on the Complaint would be improper because Respondent's alleged actions with regard to its speech were consistent with the Notice of the Election in NLRB Case No. 01-RC-283202.

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remedial, violate Respondent's freedom of speech and assembly rights under the First Amendment, violate the takings clause of the Fifth Amendment, and are beyond the authority of the Board to order under Section 10(c) of the Act.

For example, the ordering of the prayed-for remedy relating to the reading of a notice would exceed the Board's authority under Section 10(c) of the Act and constitute an unconstitutional infringement on the First Amendment rights of freedom of speech and the right of the people peaceably to assemble, unconstitutional compelled speech that is prohibited by the First Amendment, and an unconstitutional deprivation and taking of property prohibited by the Fifth Amendment. *See, e.g., Denton Cty. Elec. Coop., Inc. v. NLRB*, 962 F.3d 161, 174 (5th Cir. 2020).

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Second, the Board permitting introduction of such evidence and relying upon it to support a remedy would violate Respondent's Due Process Rights under the U.S. Constitution and other federal law. The Complaint does not provide details regarding the "prior conduct . . . at other

locations," including the identity of Respondent's agents, the other locations, the conduct, or the dates the conduct occurred, thereby depriving Respondent adequate opportunity to defend against these assertions.

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15. Respondent further reserves the right to amend and/or supplement its answers and affirmative defenses.

WHEREFORE, Respondent respectfully requests that the Complaint be dismissed in its entirety, with prejudice.

Dated: January 24, 2023

Respectfully submitted,

MORGAN, LEWIS & BOCKIUS LLP

By: */s/ Michael E. Lignowski/rts*

Michael E. Lignowski
Senior Attorney
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
Phone: +1.215.963.5455
Fax: +1.215.963.5001
Email: michael.lignowski@morganlewis.com

Attorney for Respondent Dollar General

CERTIFICATE OF SERVICE

I hereby certify that on January 24, 2023, an electronic copy of the foregoing Respondent Dollar General's Answer to the Amended Consolidated Complaint in NLRB Cases 01-CA-284330, et al. was sent by e-mail to the following e-mail addresses:

Jessica Petronella, Organizing Director
UFCW Local 371
290 Post Road West
Westport, CT 06881
Email: jespetronella@gmail.com
Charging Party Representative

Jo Anne P. Howlett, Esq.
NLRB, Region 1
10 Causeway St. - 10th Floor
Boston, MA 02222
Email: JoAnne.Howlett@nlrb.gov
Counsel for the General Counsel

/s/ Ryan T. Sears (dated January 24, 2023)

Ryan T. Sears, Associate
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004
Phone: +1.202.739.5077
Fax: +1.202.739.3001
Email: ryan.sears@morganlewis.com

Attorney for Respondent Dollar General